

NEW YORK TIMES

PAGE 8-18 DATE 17 Jan 78

FORD AIDES WEIGHED CHARGING REPORTERS

Former Press Secretary Says in Book That Disclosures by 3 Led to Administration Investigation

By MARTIN TOLCHIN

Special to The New York Times

WASHINGTON, June 13—The Ford Administration gave "serious consideration" to the criminal prosecution of three reporters who allegedly violated the Signals Intelligence Act by publishing classified information, according to a forthcoming book by Ron Nessen, President Ford's press secretary.

The three were Nicholas Horrock of The New York Times, Bob Woodward of The Washington Post and Tad Szulc, a freelance writer. Their prosecution was urged, according to Mr. Nessen, by then Secretary of State Henry A. Kissinger, Secretary of Defense James R. Schlesinger and Lieut. Gen. Brent Scowcroft, deputy director of the National Security Council.

The Signals Intelligence Act makes it a crime to publish classified information obtained through electronic eavesdropping or to disclose the procedures used to intercept such information. Conviction is punishable by a sentence at long as 10 years, a fine as much as \$10,000 or both.

No charges were brought against the three reporters, Mr. Nessen wrote, because Attorney General Edward Levi had concluded that too many secrets would have had to have been revealed in a criminal trial.

James C. Goodale, executive vice president of The New York Times Company, recalled being warned by Mitchell Rogovin, special counsel to the director of the Central Intelligence Agency, of the danger of prosecution under the Signals Intelligence Act. Mr. Goodale said that he told Mr. Rogovin that the Act was unconstitutional as applied to the press.

Criminal Charges Weighed

General Scowcroft, reached by telephone, confirmed that the National Security Council and the Defense Department had asked the Justice Department to weigh criminal charges.

"We did ask Justice to look into some of the leaks and see whether there were any grounds for action," General Scowcroft said.

He added, however, that no action was taken. "It was a passing thing," the General said. He also said he had no recollection of against whom the charges were to be brought.

Joseph Laitin, then press secretary to Mr. Schlesinger, also recalled that criminal prosecutions were considered under the Act. Mr. Laitin said he believed that an article by Seymour Hersh of The New York Times had triggered the study. Mr. Laitin added, however, that it was decided not to bring charges because a trial would pinpoint information that could be valuable to the Soviet Union.

In recent months, the Carter Administration has expressed concern sought the sources for at least four articles in The Times, and became available to the Associated Press. The Administration recently closed an investigation of how The Washington Star obtained information for articles about alleged corruption, in the Interstate Commerce Commission.

Electronic Eavesdropping

In 1975, Mr. Nessen reports, the Ford Administration was upset about an article by Mr. Horrock that said, "Presidents Nixon and Johnson receive private reports from the National Security Agency on what prominent Americans were doing and saying abroad, apparently obtained from electronic eavesdropping."

The Ford Administration also was concerned about an article by Mr. Woodward reporting that the National Security Agency had monitored the phone calls of antiwar leaders and other dissidents and an article on the National Security Agency by Mr. Szulc in Penthouse magazine.

Mr. Nessen said he had been informed by Mike Duval, who coordinated the Administration's response to the various intelligence investigations, that Attorney General Edward Levi was weighing the evidence against the three reporters.

"I told Duval that criminal prosecutions would destroy Ford's image of openness toward the press and would bring back memories of Nixon's efforts to stop publication of the Pentagon Papers," Mr. Nessen said in the book, "It Sure Looks Different From the Inside," to be published in August by Playboy Press.

The Times Is Serious Concern

Mr. Nessen said that the Administration's most serious concern was an article being prepared by The New York Times reporting that American submarines had tapped underwater cables off the coast of Vladivostok, in the Soviet Union.

"An American sub was off the coast of Vladivostok at the time, and officials feared the Russians might try to sink or capture it if the story was published," Mr. Nessen writes.

He said Mitchell Rogovin, a special counsel to the Central Intelligence Agency director and a former lawyer for Neil Sheehan, a Times reporter involved in the Pentagon Papers case, telephoned The Times several times urging that the article not be published, and warning of possible prosecution under the Signals Intelligence Act.

As a result, Mr. Nessen said, The Times prepared a "restrained" version of the article, and delayed publication until after the American submarine had left Soviet waters.

'A Legal Decision'

Mr. Nessen added that President Ford was not told about the deliberations over the prosecution of the reporters. "If Levi decided to bring charges," he wrote, "we wanted to be able to say it was purely a legal decision by the Attorney General with no political or public relations considerations from the White House."

An article entitled "Submarines of U.S. Stage Spy Mission Inside Soviet Waters," written by Seymour Hersh, was published in The Times on May 25, 1975.

Mr. Hersh said today that he had no recollection of the article's being either "restrained" or delayed.

Mr. Rogovin, reached by telephone, said that he had invited Mr. Horrock to his home to discuss an article that Mr. Horrock was working on, which he said some Administration officials believed could cause Mr. Horrock problems under the Signal Intelligence Act. Mr. Horrock's recollection was that that meeting was after publication of the article, and that the article had not been changed in any way.

file "Leaks"